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Planning Enforcement Policy

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1. INTRODUCTION

1.1 Planning enforcement plays an important role in monitoring development and investigating potential breaches of planning control. Effective enforcement is important to maintain the integrity of the decision-making process and to maintain public confidence in that process.

1.2 This document sets out the council's approach to planning compliance and enforcement and is a framework for how the council will handle reports of unauthorised development or breaches of planning control, the approach to investigation and the means by which it will seek to resolve them.

2. LEGISLATIVE AND POLICY CONTEXT

2.1 This policy has been prepared in accordance with the advice contained within the National Planning Policy Framework (NPPF) which states that :-

“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.”

2.2 Powers to enforce planning controls are given by Parts VII and VIII of The Town and Country Planning Act 1990 (as amended) and Part IV of the Planning (Listed Buildings and Conservation Act 1990).

3. AIMS AND OBJECTIVES

3.1 The council's aim is to carry out its investigations in a helpful and courteous manner, applying the principles of proportionality, consistency and transparency and encouraging negotiation where appropriate.

3.2 The key objectives of the service are:-

- To provide a service that maintains confidence in the planning system
- To provide a service that is prioritised according to the harm caused by the breach
- To achieve a reasonable balance between the protection of the public interest and allowing development to remain.
- To provide a service that seeks to appropriately remedy the effects of unauthorised development

4. WHAT IS PLANNING ENFORCEMENT?

4.1 Most types of development, such as building works or changes of use require planning permission from the council. In the event that somebody carries out works without getting the correct permission or consent, enforcement action may be taken.

4.2 Planning legislation seeks to strike a balance between a land owner's freedom to alter their property as they wish whilst at the same time protecting the environment of their neighbours and conserving historic buildings and conservation areas. Therefore, whilst the council takes a serious view of unauthorised and unlawful works, it will make every attempt to reach an agreement with owners/occupiers on how the breach of planning control can be satisfactorily dealt with prior to using its enforcement powers

5. WHEN IS ENFORCEMENT POSSIBLE?

5.1 The objective of the council in exercising its enforcement function is to provide a comprehensive and fair service. It will investigate complaints and can take action where appropriate. The most common complaints include the following:

- Unauthorised changes of use e.g. residential to commercial use.
- Unauthorised development e.g. construction of a building.
- Breaches of planning condition(s).
- Putting up unauthorised advertisement hoardings and signs.
- Unauthorised works to a listed building.
- Unauthorised demolition in a conservation area.
- Failure to repair and maintain a listed building.
- Unauthorised works to a protected tree.
- Land adversely affecting neighbourhood amenity, such as untidy sites.

6. WHAT MATTERS ARE NOT BREACHES OF PLANNING CONTROL?

6.1 If an enforcement complaint is made that is not a relevant breach of planning control it will not be investigated or allocated a case reference number. The following are examples of activities which are NOT considered breaches of planning control:

- On-street parking of commercial vehicles in residential area
- Operating a business from home where the primary use is still residential and there is no adverse impact on amenity
- Parking a mobile home within the grounds of a dwelling, provided that it is not used as a separate dwelling.
- Clearing land of undergrowth, bushes
- Felling of trees, as long as they are not protected by a Tree Preservation Order or in a conservation area.
- Undertaking works that are permitted development. Not all development requires planning permission, certain building works and some changes of use may be undertaken without planning permission.

7. INSTANCES WHEN WE CANNOT TAKE ACTION

7.1 In some cases the council may be unable to take enforcement action that is reported by members of the public. For example, when;

- the works do not constitute development under section 55 of the Town and Country Planning Act 1990
- the works or change of use fall within 'permitted development' defined by the Town and Country Planning (General Permitted Development (England) Order 2015 (as amended)
- an advertisement benefits from 'deemed consent' under the Town and Country Planning (Control of Advertisements) (England) Regulations 2007
- immunity from enforcement action has occurred by way of a use being established continuously for a period of 10 years (four years for a self-contained dwelling) or if building works have been completed more than four years ago
- the matter is a trivial or technical breach of planning control that causes no harm to the local environment or the amenity of people living nearby
- the works are considered too minor to fall within the scope of planning control – this is described by the Latin term "*de-minimis*"
- the issues relate to boundary positioning and land ownership disputes
- retrospective planning permission has regularised a previous breach.

7.2 Where enforcement action cannot be taken we will endeavour to find or recommend an alternative solution to resolve the matter. This may involve forwarding the matter to other relevant council departments or by pointing to possible external bodies or remedies if apparent.

8. SHOULD ENFORCEMENT ACTION BE TAKEN?

8.1 The enforcement system is complicated, and it should be noted that even when enforcement action can technically be taken the council has to decide in each case whether formal action would be 'expedient'.

8.2 The council will not condone willful breaches of planning control. It is important to note however that the power to take enforcement action is discretionary. In practice Castle Point Council resolves many alleged breaches of planning control and secures compliance with approved plans, planning regulations and policies without needing to take formal enforcement action.

8.3 In considering whether it is expedient to take enforcement action the council will take into account relevant planning policies and other material considerations including relevant appeal decisions and case law. The objective of planning enforcement is to remedy not punish and as such and in accordance with government guidance the council will encourage its officers to work with those in breach to achieve favourable outcomes if possible, without having to issue a formal notice.

9. POSSIBLE OUTCOMES

9.1 The main options for action are summarised as follows:

- Negotiation to sort out breaches. Government advice is that formal action should be seen as a last resort.
- 'No further action' where the breach is thought to cause little or no harm or it is not considered expedient to take formal action.
- Asking for a planning application to be submitted. Applications are sometimes requested when more information is required e.g. flood risk assessments or noise-related issues.
- Enforcement notice to remedy the breach. The varying types of enforcement notice are listed at Appendix A
- When the harm is so severe as to warrant immediate action a stop notice or a temporary stop notice may be issued.

10. REPORTING A PLANNING BREACH

10.1 Planning breaches should be reported using the [ONLINE FORM](#) on the council's website. When reporting a planning breach you must provide your name, address and contact details.

10.2 All complaints received will be treated in the strictest confidence, however sometimes complainants may be asked to provide evidence to assist officers in their investigation to establish whether a breach of planning control has occurred. This evidence may then, with their consent, be used at appeal or as part of a criminal prosecution

10.3 Other than in exceptional circumstances the complaint will only be investigated if it is sufficiently detailed. As much information about the suspected breach must be provided as is possible. This could include the following;

- When activities or building work began
- The reason why it is believed to be a breach; e.g. no planning permission / not complying with a planning condition
- A detailed description of the problem identified
- Dates and times of the activities carried out
- Names and address of those involved
- Dimensions of the alleged breach
- Photographs of the breach
- Harm that is considered to be caused

11. WHAT HAPPENS NEXT?

11.1 If the information provided is sufficient, we will send you an acknowledgement by email, the case will be logged, and an officer allocated to investigate. If you have not submitted sufficient information, we may contact you for further detail.

11.2 The enforcement officer will investigate using various means such as visiting the site, checking records and entering into discussions to determine the most relevant course of action.

11.3 Reaching a conclusion on enforcement matters can be very complex and can take some time. The council does not provide any updates during its investigations. If you have reported a potential breach you will be informed of the outcome once the council has decided on what action (if any) to take and advised the alleged offender(s) of the course of action.

12. PRIORITY OF INVESTIGATION

12.1 The council receives approximately 150 complaints each year regarding alleged breaches of planning control. Although many of these cases do not result in formal enforcement action, many involve lengthy investigation therefore we will give priority to those cases where greatest harm is caused.

Priority cases:

- Unauthorised development that causes serious and irreparable harm to the amenities of a neighbourhood or other acknowledged interest of importance or any unauthorised development causing severe disturbance to neighbours.

Second priority is given to:

- A breach causing significant harm to the amenities of a neighbourhood.
- Breaches that are contrary to the development plan or where the time limit for taking enforcement action is about to expire.
- Situations where cumulative breaches are likely to cause serious harm in terms of amenity or undermine policy objectives.

Lower priority complaints are:

- Breaches of conditions unless covered above.
- Breaches where there is judged to be minimal harm to the Council's planning objectives and policies.
- Breaches where planning permission would be likely to be granted.

13. RIGHTS OF ENTRY

Local planning authorities and Justices of the Peace can authorise named officers to enter land specifically for enforcement purposes. There must be reasonable grounds for entering the land for the purpose of obtaining information.

14. TIME LIMITS FOR TAKING ENFORCEMENT ACTION

13.1 Development becomes immune from enforcement if no action is taken:

- within four years of substantial completion for a breach of planning control consisting of operational development;
- within four years for an unauthorised change of use to a single dwelling house;
- within ten years for any other breach of planning control (essentially other changes of use).

13.2 Once these time limits have passed, the development becomes lawful unless there has been a deliberate concealment. In such cases the local planning authority may decide to serve an enforcement notice 'out of time' or apply for a planning enforcement order.

15. APPEALS

14.1 A person upon whom a statutory notice is served has a right of appeal to the Secretary of State in most cases. Appeals are processed in accordance with procedures administered by the Planning Inspectorate.

14.2 During an appeal, enforcement action is held in abeyance and no further action can be taken until the appeal is decided.

14.3 If the appeal is allowed, the enforcement notice is quashed and the investigation closed.

14.4 If the appeal is dismissed and the enforcement notice is upheld the date of the appeal decision letter becomes the effective date of the notice, with any compliance periods running therefrom. The council will then use all appropriate means to secure compliance with the notice.

Appendix A

Enforcement Notice:

This is the usual method of remedying unauthorised development. The use of the enforcement notice is an effective tool and such notices will be served fairly early on in cases that cause significant harm or where the transgressor has made clear they are unwilling to remedy the breach. The transgressor has the right to appeal against the notice to the Secretary of State.

Section 215 Notice:

Where the condition of land or a building is adversely affecting the amenity of a neighbourhood the council may issue a notice under section 215 of the Town and Country Planning Act 1990, requiring the owner or occupier to remedy the condition of the land or building. Failure to comply with the notice is a criminal offence. The council also has powers, where a notice has not been complied with, to enter the land and carry out the work itself and recover the cost from the owner.

Breach of Condition Notice:

These can be used as an alternative to an enforcement notice and are intended to remedy a breach of a planning condition (s). There is no right of appeal against this notice.

Listed Building Enforcement Notice

This is used to remedy unauthorised works to listed building and there is a right of appeal against the notice.

Advertisement Removal Notice

These can be used to remove unauthorised advertisements which do not have either express or deemed advertisement consent to be displayed. There is a right of appeal against this notice.

Discontinuance Notice

Where an advertisement is being displayed with the benefit of deemed consent, a planning authority may serve a discontinuance notice on the owner and occupier of the land and on the advertiser, requiring it to be removed, where it considers the removal to be necessary "to remedy a substantial injury to the amenity of the locality or a danger to members of the public".

Stop Notice

This has to be used in conjunction with an enforcement notice but should only be used in extreme cases where the breach of planning control is causing serious harm. The stop notice will take effect from the date specified in the notice which can be immediately but is usually between three and 28 days after service of the notice. In such cases where stop notices are issued the council may be liable to pay compensation if it is later decided that the service of a stop notice was not appropriate

Temporary Stop Notice

These are similar to stop notices (above) but take effect immediately from the moment they are displayed on a site, and last for up to 28 days. A temporary stop notice would be issued only where it is considered that the use or activity should cease immediately because of its effect on (for example) amenity, the environment, public safety etc. It may also be issued even where planning permission has been granted for development, in a case where the developer is not complying with conditions attached to the permission.

Injunction

This involves seeking an order from the court preventing an activity or operation from taking place. Failure to comply with the requirements of an injunction amounts to a criminal offence

Prosecution

In cases such as unauthorised demolition in a conservation area, severe damage to a listed building, the lopping, felling or destruction of a protected tree, the unauthorised display of an advertisement or non-compliance with an enforcement notice, prosecution action can be taken against the parties deemed responsible for the works.

Default Powers

The council may enter the land and take the necessary action to secure compliance when enforcement notices are in effect. This is only used in extreme cases and when resources allow. The council will seek to recover all costs associated with carrying out works in default.